Depot Maintenance & Partnering Provisions of Title 10

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Outline

- Definition of Depot Maintenance
- Core Logistics
- The 50 Percent Limitation on Contracting for Depot Maintenance
- The $3 Million Rule
- Prohibition on Management by End Strength
- Partnering Provisions

10 USC 2460 Definition of Depot-Level Maintenance & Repair

Definition of Depot-Level Maintenance and Repair

- Materiel maintenance or repair requiring overhaul, upgrading or rebuilding of parts, assemblies, or subassemblies
- Includes
  - Testing & reclamation
  - Software maintenance
  - Interim contractor support, contractor logistics support, & similar contractor support (if considered a depot service)
- Regardless of the source of funds
- Regardless of the location performed

Definition of Depot-Level Maintenance and Repair (cont)

- Exceptions
  - Procurement of major modifications or upgrades designed to improve performance
  - Nuclear refueling of an aircraft carrier
  - Procurement of parts for safety modification
    - » However, does include installation of safety modifications

10 USC 2464
Core Logistics

Core Logistics Capabilities

- DoD maintain a core logistics capability that is Government-owned and Government-operated (including Government personnel and Government-owned and Government operated equipment and facilities)
- Ensure a ready and controlled source of technical competence and resources necessary
- Ensure effective and timely response to a mobilization, national defense contingency situations, and other emergency requirements

Core Logistics Capabilities (cont)

- The Secretary of Defense shall identify the core logistics capabilities described … and the workload required to maintain those capabilities
- The SECDEF shall require the performance of core logistics workloads necessary to maintain the core logistics capabilities identified
  - at Government-owned, Government-operated facilities of the DoD (including Government-owned, Government-operated facilities of a military department)
  - and shall assign such facilities sufficient workload to ensure cost efficiency and technical competence

Core Logistics Capabilities (cont)

- Requirement: Capability must be established within four years of initial operating capability
- Exceptions-
  - Special Access Programs
  - Nuclear Aircraft Carriers
  - Commercial Items
- Workloads needed to meet core capabilities not subject to OMB Circular A-76
  - SecDef waiver only in the case when workload is no longer required for national defense reasons

10 USC 2466 Limitation on Performance of Depot Level Maintenance (50-50)

50-50

- Establishes the 50 percent limit on contracting for depot maintenance for each military department and Defense Agency
  - Funds not used for contract shall be used for the performance of workload by employees of the DoD
- Requires annual reporting to the Congress
  - GAO must audit report
- Allows Secretary of Defense waiver based on reasons of national security

Rules of the Road for 50-50 Accounting

Provisions of Law

- Two governing statutes
  - 10 USC 2466, Limitation on the performance of depot-level maintenance of materiel
    - **Establishes the 50 percent limit on contracting for depot maintenance by a MILDEP or Defense Agency**
    - **Requires annual reporting to the Congress**
    - **Allows waiver based on reasons of national security**
  - 10 USC 2460, Definition of depot-level maintenance and repair
    - **Defines what is included and what is excluded**

Who Accounts?

- "… funds made available in a fiscal year to a military department or Defense Agency …"
- The MILDEP, Defense Agency or other activity that gets the original appropriation from Congress is accountable for the limit and responsible for reporting
- Interservice work is reported by the Principle, not the Service performing or contracting for the work

Is It Contract or Organic?

- "… for the performance by non-Federal Government personnel …"
- "… for the performance of depot-level maintenance and repair workload by employees of the Department of Defense"
- Who performs the touch labor determines how the work order or contract will be accounted
- Who does the touch labor determines how all the other factors of production will be accounted, either public or private

What Appropriations?

- "… regardless of the sources of funds for maintenance or repair …"
- All appropriations are included, not just designated depot maintenance O&M accounts
- It is the nature of the work as defined by 10 USC 2460, not the appropriation type, that governs

What Locations?

- “ … regardless of … the location at which the maintenance or repair is performed”
- Work performed at non-depot locations is counted, depending on the nature of the work
- If it meets the 10 USC 2460 definition, count it
- How the maintenance action is coded, if it is performed outside a depot, guides if it is to be included
- Generally, all work performed in a depot is counted, as overflow from lower levels of maintenance is an inherent depot mission

What Is Included?

- All factors of production are aggregated to include: labor, material, parts, indirect & overhead
- Software maintenance
- ICS, CLS, and similar contractor support (e.g., TSPR, PBL, flexible sustainment) to the extent that it is for performance of depot-level maintenance and repair
- Installation of modifications & upgrades, when a depot-level service

What Is Excluded?

- Procurement of modifications & upgrades
- Nuclear refueling of aircraft carriers
- Remanufacturing wherein hulls, chassis, airframes and other major assemblies are utilized in new production
  - However, disassembly, reclamation, preparation, recovery, restoration and other depot maintenance actions accomplished prior to remanufacturing are included

Is There an Exception to 50-50 for Partnering?

- Sec 342 of the NDAA for FY 2002 and sec 334 of the NDAA for FY 2003 amended 10 USC 2474 creating an exemption to the 50 percent limitation in 10 USC 2466(a) on contracting for depot maintenance
  - Work performed at a CITE by a contractor pursuant to a partnership with funds made available for depot maintenance is not counted for purposes of applying the 50 percent limitation
  - This exclusion now applies to contracts entered into during Fiscal Years 2003 through 2009
  - Separate reporting required

10 USC 2469 Requirement for Competition "The $3 Million Rule"

$3 Million Rule

- Cannot change location of performance for workloads at DoD depots valued at $3 M or greater (including labor & materials) unless-
  - Merit based selection procedures for competitions among DoD depots
  - Competitive procedures for competition among public and private sector entities
- OMB Circular A-76 does not apply
- Waiver for work performed on a CITE for 10 USC 2474 partnership. (PL 108-136, sec 333)

10 USC 2472 Prohibition on Management by End Strength

Prohibition on Management by End Strength

- Civilian employees of the DoD who perform depot-level maintenance & repair workloads
  - May not be managed on any constraint or limitation in terms of-
    - » Man Years
    - » End Strength
    - » Full Time Equivalent Positions
    - » Maximum Number of Employees
- Shall be managed solely on the basis of available workload and funds made available

Partnering (and other Sales & Leasing) Provisions

- 10 USC 2474: CITE & Partnering
- 10 USC 2563: Sales
- 10 USC 2208(j): Sales
- 10 USC 4543: Sales (Army)
- Other Sales Authorities
- 10 USC 2667: Leasing
- Federal Acquisition Regulation (FAR)

10 USC 2474: CITE & Partnerships

- Service Secretaries required to designate Centers of Industrial & Technical Excellence (CITE)
- Head of CITE authority to enter into partnerships
  - Employees of Center, private industry, & others to perform work **related to core competencies**
  - Private industry & others to use facilities or equipment of the Center that are not fully utilized
- Private sector use of excess capacity
  - Facilities or equipment may be used by private industry to perform maintenance or produce goods
  - Formerly in 10 USC 2471 (now repealed)

10 USC 2474: CITE & Partnerships (cont)

- Crediting Amounts
  - Credited to the appropriation or working capital fund
  - Consideration in the form of rental payments or other forms may be accepted for use of property
- Private sector use of excess equipment
  - No adverse impact on readiness
  - Must reimburse direct & indirect costs
  - Hold harmless provisions of 10 USC 2563 or in case of war or national emergency

10 USC 2474: CITE & Partnerships (cont)

- Exemption from 50-50 limit (10 USC 2466)
  - Depot must be designated a CITE
  - Work must be performed on the depot by industry personnel
  - Work must be pursuant to a partnership
  - Now applies to contracts entered into during fiscal years 2003 through 2009

10 USC 2563: Sales

- Sale of articles & services by working capital fund industrial facilities not commercially available
  - Army 10 USC 4543 sales excluded
- Conditions
  - Hold harmless **except** willful misconduct, gross negligence, quality, schedule, or cost
  - Only incidental subcontracting
  - In the public interest
  - Not interfere

10 USC 2563: Sales (cont)

- Methods of sales
  - Advanced incremental funding allowable
  - Full cost, either reimbursable or fixed price
- Proceeds to fund, including working capital fund
- Not commercially available = unavailable in required
  - Quantity,
  - Quality, or
  - Time

10 USC 2208(j): Sales

- Sale of manufacturing, remanufacturing & engineering services by working capital fund industrial facility
  - Fulfilling DoD contract or subcontract & solicitation is open to public-private competition, or
  - Advances objectives of 10 USC 2474 (sustain core capabilities)

10 USC 4543: Sales

- Working capital funded Army facilities that manufacture cannons, gun mounts, recoil mechanisms, ammo, munitions or components to sell manufactured articles and services
- Conditions
  - US manufacturer
  - Not interfere
  - Services must be performed in US
  - Not commercially available

10 USC 4543: Sales (cont)

- Conditions (continued)
  - Hold harmless except for willful misconduct or gross negligence
  - Only incidental subcontracting
  - In public interest

Other Sales Authorities

- 10 USC 2539b – Services for testing of materials, equipment, models, computer software and other items
- 10 USC 7300 – Naval shipyard sales of articles or services to private shipyards for fulfillment of contracts for nuclear ships
- 22 USC 2754 – Sales or lease of articles or services to friendly countries under certain conditions
- 22 USC 2770 – Sales of articles and services to US companies for incorporation in end items to be sold to a friendly country or international organization under certain conditions

10 USC 2667: Leasing

- Lease of non-excess real or personal property
  - Secretary determination if for more than 5 years
  - Payment not less than fair market value, but payment can be in kind
    - Maintenance, protection, alteration, repair, improvement (including environmental)
    - Construction of new facilities
    - Provision of facilities
    - Facility operation
    - Provision of other services

10 USC 2667: Leasing (cont)

- Payments for utilities and services furnished credited to appropriation or working capital fund furnishing utilities or services
- Other payments to special account used for maintenance, protection, alteration, repair construction, restoration, construction, leases or support operations of Service
  - » At least 50 percent of proceeds to same military installation
- Personal property only leases of more than $100K per year must be competitively awarded

Federal Acquisition Regulation (FAR)

- FAR Subpart 45.3: Providing Government Property to Contractors
- FAR Subpart 45.4: Contactor Use and Rental of Government Property

Partnering Conclusions

- Many authorities with differing conditions and restrictions
- Parties tend to use those provisions they are most familiar with as long as they can achieve their objective
- The provisions of 10 USC 2474 are by far the broadest and most flexible
  - All Services have designated their maintenance depots as CITEs